



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Facsimile and First Class Mail
Fax (732) 741-9993

DEC 20 2011

Brian M. Nelson, Esq.
Menna Supko & Nelson LLC
830 Broad Street, Suite B
Shrewsbury, New Jersey 07702

RE: MUR 6472
Diane Gooch for Congress, *et al.*

Dear Mr. Nelson:

On May 31, 2011, the Federal Election Commission notified your clients, Diane Gooch, Diane Gooch for Congress, Inc., and Ronald Gravino, in his official capacity as treasurer, Strong New Jersey and the *Two River Times*, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On December 13, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that: (1) Diane Gooch violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a); (2) Diane Gooch for Congress, Inc., and Ronald Gravino, in his official capacity as treasurer, violated 2 U.S.C. §§ 433 and 434; (3) Strong New Jersey violated 2 U.S.C. §§ 433, 434 and 441b; or (4) the *Two River Times* violated 2 U.S.C. § 441b.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Diane Gooch, **MUR 6472**
5 Diane Gooch for Congress, Inc.,
6 and Ronald Gravino, in his official capacity as treasurer
7 Strong New Jersey
8 The *Two River Times*
9

10 **I. GENERATION OF MATTER**

11
12 This matter was generated by a complaint filed with the Federal Election Commission
13 by Vincent T. Ehmann, Jr. See 2 U.S.C. § 437g(a)(1).

14 **II. INTRODUCTION**

15 Complainant alleges that Diane Gooch, an unsuccessful candidate in the 2010 New
16 Jersey Sixth Congressional District Republican Primary Election, is running again for Congress
17 but has failed to register with the Federal Election Commission (the "Commission") as a
18 candidate and failed to designate her principal campaign committee, in violation of the Federal
19 Election Campaign Act of 1971, as amended (the "Act"). 2 U.S.C. § 432(e) and 11 C.F.R.
20 § 101.1. Complainant further alleges that Strong New Jersey ("SNJ"), an organization founded
21 by Gooch, is engaged in activities in support of Gooch's candidacy, including soliciting and
22 receiving campaign contributions for Gooch through its website, receiving contributions from
23 Gooch and her business, and disseminating a campaign mailer costing more than \$5,000, but
24 has failed to register and report as an authorized campaign committee of Gooch in violation of
25 the Act. 2 U.S.C. §§ 433 and 434. The complaint asserts that SNJ is "pretending to be a
26 P.A.C." when it really is meant to "push [Gooch's] candidacy." Complainant notes that the
27 return address on the SNJ mailer is the address for the offices of the *Two River Times*, a
28 newspaper owned by Gooch. The complaint names as respondents Diane Gooch; Diane Gooch

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1 for Congress, Inc., Gooch's 2010 principal campaign committee (the "Committee"), and Ronald
2 Gravino, in his official capacity as Committee treasurer; Strong New Jersey; and the *Two River*
3 *Times*.

4 Respondents filed a joint response, denying the allegations and asserting that Gooch is
5 not a candidate and was not a candidate at any time during the period relevant to the complaint,
6 that SNJ did not solicit or receive contributions for Gooch or for any federal candidate, and that
7 no improper corporate contribution resulted from SNJ's use of the address of the *Two River*
8 *Times* as its return address on mailers.

9 As discussed below, the available information does not indicate respondents violated the
10 Act or Commission regulations by failing to file a Statement of Candidacy, failing to register
11 and report as a political committee, or by using the *Two River Times* return address. Therefore,
12 the Commission found no reason to believe that Diane Gooch violated 2 U.S.C. §§ 432(e)(1)
13 and 11 C.F.R. § 101.1(a); no reason to believe that Diane Gooch for Congress, Inc., and Ronald
14 Gravino, in his official capacity as treasurer, violated 2 U.S.C. §§ 433 and 434; no reason to
15 believe that Strong New Jersey violated 2 U.S.C. §§ 433, 434, and 441b; and no reason to
16 believe that the *Two River Times* violated 2 U.S.C. § 441b.

17 **III. FACTUAL AND LEGAL ANALYSIS**

18 **A. Factual Summary**

19 Gooch was an unsuccessful candidate in the June 8, 2010, New Jersey Sixth
20 Congressional District Republican Primary Election. Diane Gooch for Congress, Inc. was
21 Gooch's principal campaign committee, and Ronald Gravino served as the Committee's
22 treasurer. The Committee filed its final disclosure report with the Commission on
23 December 17, 2010, and was approved for termination on January 6, 2011. Gooch has not filed

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1 with the Commission any new registration materials for the 2012 elections, and, according to
2 the response, is not currently a candidate for Congress, and was not a candidate at any time
3 relevant to the complaint. Response at 3.

4 Gooch, a self-described philanthropist and the owner of a local small business, resides in
5 Rumson, New Jersey. She founded SNJ on August 13, 2010, approximately two months after
6 she lost the primary. Response at 2. SNJ is a non-profit, New Jersey-based corporation
7 registered with the IRS as a tax-exempt political organization under section 527 of the Internal
8 Revenue Code. See Response at 2; Ex. B, Political Organization Notice of Section 527 Status
9 (Form 8871). According to its IRS Form 8871, Gooch is the chair and there are two trustees,
10 one of whom is Gravino. Gravino is also custodian of records and the person whose signature
11 appears on the tax returns.

12 SNJ's publicly available IRS tax returns for 2010 and 2011 show that it received
13 contributions from Gooch (\$80,000); the Committee (\$19,000); and Michael Gooch, Diane
14 Gooch's spouse, (\$140,000 and \$200,000). SNJ is not registered with and does not file
15 disclosure reports with the Commission.

16 The SNJ website states that "Strong New Jersey is a group of concerned citizens ready
17 to raise their voices to preserve and promote responsible government, individual liberty and free
18 enterprise in our state." See <http://www.strongnewjersey.com/> (last visited on October 25,
19 2011). The "About Strong New Jersey" page of the website lists Gooch as its founder and
20 describes her as a "small business owner, philanthropic leader and former Congressional
21 candidate." It also includes a webpage entitled "About Diane Gooch," which contains a photo
22 and biography of Gooch and notes that she has served as the Vice Chair of the Monmouth
23 County Republican Party since 2007. The site also includes a "News" webpage listing news

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1 articles by or about SNJ, an "Engage" webpage for those wishing to volunteer for the
2 organization, and a "Donate" webpage for donations to SNJ.¹

3 SNJ disseminated a direct mailer, which was attached to the complaint. SNJ used as a
4 return address on the direct mailer a previous address of the *Two River Times*, a weekly
5 community newspaper owned by Michael and Diane Gooch. Response at 2-3; Ex. E;
6 <http://www.tworivertimes.com/> (last visited on October 25, 2011).

7 Complainant asserts that on May 18, 2011, he received an "expensive" mailer from SNJ,
8 an organization that he was "unaware of," but whose return address was the same as the *Two*
9 *River Times*, the newspaper owned by Gooch. Complaint at 1. Complainant further asserts that
10 the SNJ website contained the same information as the mailer and also "asks you to donate and
11 support Strong New Jersey and Diane Gooch for Congress." *Id.* Complainant asserts that the
12 mailer is "a fraudulent piece of political communication" and that "it pretends to be from a true
13 political action group." *Id.* Complainant asserts that SNJ has paid more than \$5,000 for the
14 direct mailer, and that SNJ solicits and receives contributions for the Gooch campaign through
15 its website, including contributions from Gooch herself "or her business," but has not registered
16 as a political committee in violation of the Act. *Id.* Finally, Complainant asserts that Gooch is
17 running for Congress in 2012, but has not registered with the Commission as a candidate or
18 designated her authorized campaign committees. Complaint at 2.

19 The SNJ mailer attached to the complaint is entitled "New Jersey is ready to stand for
20 what's right," followed by photos of an American flag, banners, and a window, with the
21 statements "Open," "Grand Opening," and "Now Open." Below the photos are the statements:
22 "Republicans are Ready to Make New Jersey Strong Again," "Stand Proud," "Strong New
23

¹ The "donate" webpage does not contain any message concerning how SNJ might use the donated funds.

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1 Jersey,” and “Stand United.” The mailer contains additional photos of banners and flags and
2 other statements such as “Strong New Jersey will fight for Conservative Republican Principles”
3 and “Join Us. Together, We Will Make New Jersey Strong Again.” The mailer also contains a
4 survey and a discussion of tax and economic issues in New Jersey. In a section entitled
5 “Spreading a Conservative Message,” the mailer provides a sample of SNJ’s statements in
6 editorials, television news programs, and advertisements on television and radio to “support
7 Republican candidates and conservative principles.” An excerpt from an editorial entitled “Tax
8 the Rich, Kill the Jobs” from the Newark, New Jersey *Star-Ledger*, dated October 6, 2010,
9 states: “Memo to Mr. Reid, Pelosi, and the U.S. Congress, including our own New Jersey
10 delegation in Washington: As you weigh the benefits of scoring class-war Brownie points by
11 excluding ‘the rich’ from an extension of the Bush tax cuts, please, use some common sense –
12 and definitely bear New Jersey in mind.” The mailer has a photo of Gooch, identified as the
13 chair of the organization. The mailer states that Gooch “is a small business owner, newspaper
14 publisher, political activist and advocate for issues important to New Jersey’s families and
15 communities. Diane established Strong New Jersey to advocate for the principles that make
16 America great and New Jersey strong: small business, free enterprise, a thriving shoreline, and
17 the security to pursue health, happiness and the American Dream.”

18 Respondents deny the complaint’s allegations. First, they assert that the Committee
19 could not accept campaign contributions through SNJ because Gooch is not currently a
20 candidate for Congress and was not a candidate at any time during the period relevant to the
21 complaint. Response at 3. Gooch lost the June 8, 2010, primary election and closed out her
22 campaign account on December 17, 2010, and the Committee was terminated on January 6,
23 2011. According to the response, Gooch has not formed any subsequent candidate committees,

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1 and no such filings are on the public record. *Id.* Respondents acknowledge that SNJ's donation
2 webpage "did contain incorrect disclaimer language [indicating that the Committee was
3 soliciting contributions] that had been copied and pasted improperly by a website vendor," but
4 that the problem had since been corrected and, in any event, "[n]o contributions were ever
5 received through the website and it was properly designed to deposit any electronic
6 contributions made to Strong New Jersey, not Diane Gooch for Congress's closed bank account,
7 which would have been impossible." *Id.*

8 Second, Respondents assert that SNJ is not a "political action committee," or required to
9 register as a political action committee, because it does not contribute to or coordinate its
10 activities with any federal candidates or committees. *Id.* They further assert that SNJ's direct
11 mailer was "principally focused on state issues more than a year prior to the next federal
12 election" and "is not an electioneering communication." *Id.* Respondents note that SNJ
13 regularly reports its contributions and expenditures to the IRS and, as indicated on its reports,
14 "does receive contributions from Diane Gooch and others, as permitted by law and without
15 limit." *Id.* Finally, respondents argue that there is no merit to Complainant's suggestion that
16 Gooch made an illegal corporate contribution through the use of the former address of the *Two*
17 *River Times* as a return address on the mailer. *Id.* Respondents explain they used that address
18 on the direct mailers as a matter of convenience so that Gooch would not have to use her home
19 address. *Id.* Respondents assert that even if such use is considered to be a *de minimis*
20 contribution to SNJ, it is permissible, and in any event, SNJ is not a political committee under
21 the Act, but a Section 527 tax-exempt organization registered with the IRS. *Id.* at 3-4.

B. Legal Analysis

1. Allegations that Diane Gooch is a Federal Candidate

The first issue is whether SNJ and Gooch conducted activities triggering candidate reporting requirements under the Act. An individual becomes a candidate for federal office – and thus triggers registration and reporting requirements under the Act – when he or she has received contributions or made expenditures in excess of \$5,000. 2 U.S.C. § 431(2).²

Commission regulations set out five non-exhaustive factors to be considered in determining whether an individual has become a candidate. These factors include an evaluation of whether the individual is (1) using general public political advertising to publicize his or her intention to campaign for Federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to raise campaign funds that would be spent after he or she becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; and (5) taking action to qualify for the ballot under state law. 11 C.F.R. §§ 100.72(b); 100.131(b).

Within 15 days of meeting the \$5,000 threshold and becoming a candidate, an individual is required to designate a principal campaign committee by filing a Statement of Candidacy with the Commission. *See* 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). The principal campaign

² However, “[f]unds received solely for the purpose of determining whether an individual should become a candidate are not contributions,” and “[p]ayments made solely for the purpose of determining whether an individual should become a candidate are not expenditures.” 11 C.F.R. §§ 100.72; 100.131. Such “testing the waters” activities include conducting polls, making telephone calls, and traveling to determine the viability of the potential candidacy. *See* 11 C.F.R. §§ 100.72(a); 11 C.F.R. § 100.131(a). An individual who is “testing the waters” need not register or file disclosure reports with the Commission unless and until the individual subsequently decides to run for Federal office or conducts activities that indicate he or she has decided to become a candidate. All funds raised and spent for “testing the waters” activities are, however, subject to the Act’s limitations and prohibitions. *Id.*

1 committee must then file a Statement of Organization within 10 days of its designation, *see*
2 2 U.S.C. § 433(a), and must file disclosure reports with the Commission in accordance with
3 2 U.S.C. § 434(a).

4 The available information indicates that Gooch is not a candidate for Congress and was
5 not a candidate during the relevant period. Complainant's allegation that Gooch is a candidate
6 for Congress in 2012 appears to be based on the direct mailer and the solicitation for donations
7 to Gooch's campaign committed on the SNJ website. When the mailer was circulated, Gooch
8 had lost the Republican primary, her former principal campaign committee had filed its final
9 disclosure report, and the Committee was approved for termination by the Commission. Both
10 the SNJ mailer and website are primarily focused on state issues and do not suggest that Gooch
11 is currently running for Congress or support her candidacy for a federal office. Although the
12 available information indicates that Gooch may be interested in running again for Congress in
13 2012, it does not appear that she has made any definite public announcements regarding her
14 future plans or has engaged in other activity that indicates she has decided to become a
15 candidate.

16 In a video interview posted on SNJ's home page, entitled "On the Record with Diane
17 Gooch," indicated as "uploaded by goocheampaign on April 7, 2011," Gooch is asked whether
18 she might "run against Frank Pallone in 2012."³ She tells the interviewer that she does not
19 know at this point since New Jersey may undergo re-districting, but she would "let you know,"
20 and "If I feel that I'm the best candidate and I can beat him then I would." *See*
21 <http://www.strongnewjersey.com/> (last visited on October 25, 2011); *see also*,
22 <http://vip.politickernj.com/45203/little-vows-take-pallone-down> (discussing potential candidates

³ We realize that the designation "goocheampaign" might facially suggest that Gooch was a candidate at the time, but the other information mentioned in this paragraph leads us to conclude she was not.

1 in the 6th district race and stating that Gooch “has not ruled out a run in 2012”) and
2 http://blog.nj.com/njv_auditor/2011/06/assemblyman_joe_malone_is_about.html (stating that
3 Gooch has not decided whether she will run pending redistricting) (last visited on October 25,
4 2011).

5 Although the SNJ website contained a solicitation for donations to the Gooch
6 Committee, and the response asserts that the SNJ website contained an “incorrect disclaimer”
7 that has been corrected, it does not dispute the allegation that it was a solicitation. It appears,
8 however, that SNJ and the website were established in August 2010, after Gooch had lost the
9 June 8, 2010, primary election, the Committee’s disclosure reports do not reflect that Gooch
10 received any contributions after June 2010, and respondents deny receiving any contributions to
11 Gooch from the website.

12 Therefore, the Commission found no reason to believe that Diane Gooch violated
13 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a) by failing to file a Statement of Candidacy and to
14 designate a principal campaign committee and no reason to believe that Diane Gooch for
15 Congress, Inc., and Ronald Gravino, in his official capacity as treasurer, violated 2 U.S.C.
16 §§ 433 and 434, by failing to comply with the registration and reporting requirements for
17 political committees.

18 **2. Allegations that SNJ Failed to Organize, Register, and Report as an**
19 **Authorized Campaign Committee of Gooch**
20

21 A candidate may designate additional political committees to serve as authorized
22 committees to receive contributions or make expenditures on behalf of the candidate. 2 U.S.C.
23 § 432(e)(1); 11 C.F.R. §§ 101.1(b) and 102.13(a)(1). Each authorized campaign committee is
24 required to file a statement of organization within 10 days after designation and file disclosure
25 reports. 2 U.S.C. §§ 433(a) and 434. The Act defines a “political committee” as any

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1 committee, club, association, or other group of persons that receives “contributions” or makes
2 “expenditures” for the purpose of influencing a federal election which aggregate in excess of
3 \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The Act defines a contribution as “any
4 gift, subscription, loan, advance, or deposit of money or anything of value made by any person
5 for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i). An
6 expenditure is “any purchase, payment, distribution, loan, advance, deposit, or gift of money or
7 anything of value, made by any person for the purpose of influencing any election for Federal
8 office.” 2 U.S.C. § 431(9)(A)(i). An organization will not be considered a “political
9 committee” unless its “major purpose is Federal campaign activity (*i.e.*, the nomination or
10 election of a Federal candidate).” Political Committee Status: Supplemental Explanation and
11 Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007). *See Buckley v. Valeo*, 424 U.S. 1, 79
12 (1976); *FEC v. Massachusetts Citizens for Life, Inc. (MCFL)*, 479 U.S. 238, 262 (1986).
13 Political committees must register with the Commission and must file disclosure reports
14 detailing all contributions and expenditures. *See* 2 U.S.C. §§ 433 and 434.

15 Complainant alleges that SNJ “is pretending to be a P.A.C.,” but is not registered as
16 such, that it is “owned by the candidate,” that it has spent over \$5,000 on the mailer, and it has
17 solicited and received contributions to the Gooch campaign from Gooch and others. As
18 discussed above, however, it does not appear that Gooch has triggered candidate status for the
19 2012 election cycle, and thus the costs associated with the mailer and website do not constitute
20 “contributions” or “expenditures” under the Act. Similarly, despite the solicitation on the SNJ
21 website for the Gooch campaign, it does not appear that SNJ received any contributions for the
22 Gooch campaign through its website or through other means.

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1 In sum, SNJ does not appear to have received contributions or made expenditures of
2 \$1,000 or more in a calendar year in support of Gooch and thus it does not appear to be an
3 authorized campaign committee of Gooch. Therefore, the Commission found no reason to
4 believe that Strong New Jersey, Inc., violated 2 U.S.C. §§ 433 and 434 by failing to comply
5 with the registration and reporting requirements for political committees.

6 **3. Allegations Relating to Use of the Return Address on the Mailers**

7 Under the Act, corporations are prohibited from making contributions from their general
8 treasury funds in connection with any election of any candidate for federal office. 2 U.S.C.
9 § 441b(a). A candidate, political committee, or other person is prohibited from knowingly
10 accepting or receiving any corporate contribution. *Id.*

11 Complainant alleges that SNJ's use of the *Two River Times* return address on the mailers
12 may have been a prohibited in-kind corporate contribution from the newspaper to SNJ. As
13 noted above, however, the available information does not indicate that SNJ is a political
14 committee under the Act. Accordingly, any in-kind donations from the *Two River Times* to SNJ
15 would not constitute an impermissible contribution under the Act. Therefore, the Commission
16 found no reason to believe that the *Two River Times* and SNJ violated 2 U.S.C. § 441b in
17 connection with the use of the return address on the mailers.

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